

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KAREN HALE,	}	Case No. CV 11-1916 VAP (MRW)	
Petitioner,		}	ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE
vs.			
J. CAVAZOS, Warden,			
Respondent.			

Pursuant to 28 U.S.C. § 636, the Court reviewed the Petition, the records on file, and the Report and Recommendation of the United States Magistrate Judge. Further, the Court has engaged in a de novo review of those portions of the Report to which Petitioner has objected.

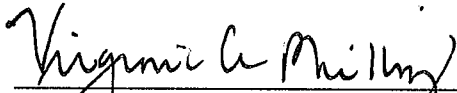
Petitioner objects to the Magistrate Judge's conclusions that: (a) her third claim is unexhausted under AEDPA; and (b) this Court does not have jurisdiction to consider the claim. The Court recognizes that the exhaustion requirement under the statute "is not jurisdictional" in a formal sense. Anderson v. Johnson, 338 F.3d 382, 386 (5th Cir. 2003). However, the law is quite clear that "a state prisoner's federal habeas petition should be dismissed" if it contains unexhausted claims not presented to a state court. Coleman v. Thompson, 501 U.S. 722, 731 (1991);

1 Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006) (district court properly  
2 dismissed untimely, wholly unexhausted habeas petition).

3 In the present case, the Magistrate Judge correctly concluded that Petitioner  
4 did not fairly present her double jeopardy challenge as articulated in her third claim  
5 to any state court. Indeed, Petitioner admits that she chose not to present the  
6 federal constitutional claim in her renewed state habeas petition even though the  
7 Court previously informed her that the claim was not exhausted. (Docket # 29  
8 at 3.) The Court agrees with the Magistrate Judge's decision that the federal claim  
9 is unexhausted; dismissal of the petition correctly follows from that conclusion.  
10 The Court therefore accepts the findings and recommendation of the Magistrate  
11 Judge.

12 IT IS ORDERED that Judgment be entered granting the motion to dismiss  
13 the Second Amended Petition and dismissing this action without prejudice.

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15 DATE: Sept 6 2011

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17 HON. VIRGINIA A. PHILLIPS  
18 UNITED STATES DISTRICT JUDGE  
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